

# **\$400 Property Tax Refund**

## **Frequently Asked Questions**

**Last updated August 23, 2007**

*This information is intended to be a general guide to assist taxpayers in determining eligibility for the refund and may be amended as needed from time to time. However, the information provided herein is not legally binding, and taxpayers and other persons should rely on the advice of legal counsel when seeking a strict application of law.*

*The answers to all scenarios contained in this document are based on the premise that the property owner has met the basic requirements of the tax refund.*

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### **1. LENGTH OF OCCUPANCY**

#### **1.1 The form and instructions say that in order to qualify for the refund I must have occupied my home for at least 7 months during 2006. Exactly what does this mean?**

The Administrative Rules of Montana provide that in order to qualify for the refund you must have occupied your principal residence for 198 consecutive days.

#### **1.2 In 2006 I moved from one principal residence to another, but was not in either residence for 198 consecutive days. Do I still qualify for the refund?**

Yes, the Administrative Rules of Montana provide that in this situation you would still qualify for the refund. You must have owned and occupied one or both of the residences for 198 consecutive days, and also must have paid 198 days worth of property taxes on one or both of the residences.

#### **1.3 I own a residence in Montana, which I occupy while I am in Montana. I move to Arizona in the winter and live in my residence (or RV) in Arizona from September to the following spring, which can vary. I pay the property tax on the residence in Montana. The residence in Montana is vacant while I am away. Am I eligible for the refund?**

No, because you would not have met the seven months occupancy requirement.

- 1.4 I owned and occupied a home in Montana for 30 years. In 2006 I sold the home and moved into an apartment/retirement home. I did not live in my home for 7 months. Can I claim the refund?**

No, you did not own and occupy the home for 7 months or more during 2006.

## **2. MARRIAGES in 2006**

- 2.1 Before we got married we lived in separate houses that we each owned for 7 months or more, then we moved into a completely new home for both of us. Are we each entitled to a \$400 refund?**

Yes, provided you meet all of the other eligibility requirements such as:

- each of the homes was in Montana
- each home was your principal residence
- you paid at least \$400 in taxes (If some lesser tax amount was paid over the three year qualification period, then the refund will be limited to the amount of tax paid.)

- 2.2 We lived in separate houses that we each owned for 7 months or more before getting married, then I moved in with my spouse in his/her home. Are we each entitled to a refund?**

Yes, provided you meet all of the other eligibility requirements such as:

- each of the homes was in Montana
- each home was your principal residence
- you paid at least \$400 in taxes (If some lesser tax amount was paid over the three year qualification period, then the refund will be limited to the amount of tax paid.)

- 2.3 We lived in separate houses that we each owned for less than 7 months before getting married, then moved into a completely new home for both of us. Are we each entitled to a refund?**

No, you are entitled to only one refund. The department allows tacking the new ownership on to the old to meet the 7 months occupancy requirement.

- 2.4 We lived in separate houses that we each owned for less than 7 months before getting married, then I moved in with my spouse in his/her home. Are we each entitled to a refund?**

No, you are entitled to only one refund. The refund would be for the home where you both now reside. The department allows tacking the new ownership on to the old to meet the 7 months occupancy requirement.

- 2.5 Before we got married we lived in separate apartments, but purchased and lived in our new home for 7 months or more. Are we entitled to a \$400 refund?**

Yes, you are entitled to one refund provided all other eligibility requirements were met.

- 2.6 Before we got married we lived in separate apartments for 7 months or more, then we purchased and moved into a new home. Are we entitled to a \$400 refund?**

No, you did not meet the 7 months occupancy requirement.

## **3. DIVORCES in 2006**

- 3.1 My husband/wife and I lived in a house we owned together for 7 months or more. After getting divorced we both moved into an apartment. Who is entitled to the \$400 refund?**

The property qualifies for one refund. Who receives it would be decided by the divorce decree.

- 3.2 We were divorced after living in our home for 7 months or more and we each moved into separate houses that we are buying separately. Are we both entitled to a \$400 refund?**  
No, there can be only one \$400 refund. Who receives it would be decided by the divorce decree.
- 3.3 We were divorced after living in our home for less than 7 months and we each moved into separate houses that we are buying separately. Are we entitled to a \$400 refund for the home that we lived in together?**  
No, because you did not meet the 7-month occupancy requirement. However, each of you may qualify for a refund for your new separate home, if you resided there for at least 7 months in 2006.
- 3.4 We were divorced after living in our home for 7 months or more. My husband/wife got the house and I moved into an apartment. Am I entitled to a \$400 refund?**  
There can be only one \$400 refund. Who receives it would be decided by the divorce decree.
- 3.5 We were divorced after living in our home for 7 months or more and my husband/wife got our old house and I moved into another house that I bought. Am I entitled to a \$400 refund?**  
There can be only one \$400 refund. Who receives it would be decided by the divorce decree.
- 3.6 We were divorced after living in our home for less than 7 months and my husband/wife stayed our old house and I moved into another house that I bought. Am I entitled to a \$400 refund?**  
You are entitled to a refund on your new home if you resided there for 7 months or more in 2006.
- 3.7 After our divorce, my spouse was to file a deed in my name, but it has not been filed. The property is still in both names. Who is eligible for the refund?**  
Who receives it would be decided by the divorce decree.
- 3.8 We were divorced after living in our home for less than 7 months and my husband/wife got the house and I moved into an apartment. Am I entitled to a \$400 refund?**  
No, you did not meet the 7 months occupancy requirement.
- 3.9 We were divorced after living in our home for less than 7 months and we both moved into separate apartments. Am I entitled to a \$400 refund?**  
No, you did not meet the 7 months occupancy requirement.

#### **4. DEATH AND ESTATE in 2006**

- 4.1 My father/mother died late in 2006 after living in and owning his/her own home for 7 months or more. Can his/her estate claim the \$400 refund?**  
Yes, the statute provides that the estate through the personal representative may file for a deceased taxpayer's refund.
- 4.2 My parents owned their home in 2006, lived in the home for 7 months or more, but have subsequently died. The estate paid the 2006 taxes. The estate (in which I was the executor) has been settled. Can I file for the refund on behalf of my deceased parents?**  
No, however, reopening the estate to claim the refund might be an alternative. The statute permits the personal representative (executor) to make such a filing on behalf of the estate.

- 4.3 My home was only in my husband's/wife's name, who died in 2006. The estate has not been settled, no will was left. The home will end up in my name after the estate goes through the proceedings. I paid the 2006 property tax. I reside in the home full time, my children do not live with me. Am I eligible for the refund?**

No, you do not meet the qualifications of owning the home in 2006.

## **5. COMMERCIAL PROPERTY AS RESIDENCE**

- 5.1 I own and operate a commercial business, but live in or on the property. For example, it is a:**

- **small grocery store/gas station in which I live in a small apartment in the back.**
- **motel in which I live in an apartment behind the office.**
- **bed and breakfast facility in which I live in part of it.**
- **hunting lodge in which I live in one of the cabins.**
- **4-plex (or any apartment building) in which I live in one of the units.**

**The property is classified as commercial property. Do I qualify for the \$400 refund?**

Yes, provided all other eligibility is established, the refund applies even if the principal residence is otherwise zoned or partially used for commercial purposes. You may have to establish that you paid at least \$400 in property taxes on the residential portion of the property to qualify for the full refund.

## **6. OWNERSHIP/OCCUPANCY FOR INDIVIDUALS**

- 6.1 I bought a house for my son and his wife in 2006 and they lived in it for 7 months or more. The property is in my name, do I qualify for the \$400 refund?**

No, you did not occupy the residence. Therefore it is not your principal residence.

- 6.2 I bought a house for my son and his wife in 2006 and they lived in it for 7 months or more. The property is in all of our names. Who qualifies for the \$400 refund?**

Your son and his wife qualify for the refund provided they paid the property taxes and all other eligibility requirements were met.

## **7. OWNERSHIP/OCCUPANCY FOR CORPORATIONS**

- 7.1 The principal residence in which I live is on a ranch that is owned by a family corporation. Do I qualify for the \$400 refund?**

The Montana Legislature specifically provided that in cases where the principal residence is owned by a corporation a taxpayer may qualify for the refund if the following conditions are met:

- the taxpayer must have at least a 20% ownership interest in the corporation that owns the property;
- the taxpayer must have lived in the residence for at least 7 months during 2006; and
- the 2006 property taxes on the residence must have been paid.

- 7.2 I lived in a home on my father's ranch, ownership of which is under the family corporation. I paid the property taxes on my home, but I had no ownership interest in the corporation. Am I entitled to the \$400 refund?**

No, you do not meet the qualifications of owning the home because you do not have at least 20% ownership of the corporation.

## 8. OWNERSHIP/OCCUPANCY FOR ESTATE PLANNING

- 8.1 For estate planning purposes I have transferred my property to my children's names, (who do not reside with me) but I live in the home 12 months of the year and I pay the taxes. Am I eligible for the refund?**

No, you did not have an ownership interest in the property.

- 8.2 For estate planning purposes I have transferred my property to my children's names, (who do not reside with me) but I live in the home 12 months of the year and I pay the taxes. Are my children eligible for the refund?**

No, they did not meet the occupancy requirement.

- 8.3 For estate planning purposes I have transferred my property to my children's names, (who do not reside with me) but I live in the home 12 months of the year and I pay the taxes. I retain a remaining life estate in the property. Am I eligible?**

Yes, a life estate is a qualifying interest in real property.

## 9. OWNERSHIP/OCCUPANCY FOR TRUSTS

- 9.1 The property in which we lived in for 7 months or more of the year was owned by a Trust, the trustee was not identified on the deed. Who is eligible for the refund?**

No one would appear to be eligible under these circumstances.

- 9.2 The property is owned by a trust, of which I am the trustee, and I lived in the property for 7 months or more a year. Am I eligible to receive the refund?**

Not unless you are the beneficiary of the trust with sufficient current interest in the trust to qualify as an owner of the property.

## 10. OWNERSHIP/OCCUPANCY WITH DEEDS INVOLVED

- 10.1 My home is deeded to myself and my four children. I live in the home by myself all year. I pay the property taxes for the home. Am I eligible for the refund?**

Yes, you meet the ownership and occupancy qualifications.

- 10.2 My home was deeded to me and my siblings. I am the only one that occupies the home and paid 100% of the property taxes, although the property tax bill shows all of our names. Am I eligible for the refund? Are any of my siblings eligible for the refund?**

Only you are eligible. Your siblings did not occupy the residence or pay the property taxes so they do not qualify.

- 10.3 The property in which I live is deeded in divided (or undivided) interests to several individuals. We all contribute our equal share of the tax bill. I reside in the residence year around. Who is eligible for the refund?**

Only you are eligible, because the others did not occupy the residence. Please note that your refund would only be the amount that you paid (your share of the tax bill up to \$400).

- 10.4 I lived in my residence for 7 months or more during 2006. I had a lease agreement in which a portion of my rent went as a down payment on my**

**home. The deed was not filed until Jan, 2007. I paid the 2006 property taxes in full, (not prorated). Do I qualify for the refund?**

No, you do not qualify because you did not exercise the purchase option in 2006. You do not meet the ownership requirements.

**10.5 I am purchasing my residence on a contract for deed. Does this qualify for the refund?**

Yes, a contract for deed is sufficient ownership interest to qualify for the refund if all other eligibility requirements are met.

**10.6 Minor children are the deeded owners of the home. The entire family has lived in the home for 7 months or more. The parents pay the property tax. Who is eligible for the refund?**

In this case, no one qualifies for the refund. The children do not qualify because they have made no property tax payment. The parents do not qualify because they had no ownership of the property.

## **11. MOBILE OR TEMPORARY RESIDENCES in 2006**

### Mobile Homes

**11.1 I owned and lived in a permanently-affixed mobile home on a rented lot. Am I entitled to a \$400 refund?**

Yes, provided all other eligibility requirements were met, this would qualify as a principal residence.

**11.2 I lived in a mobile home on a rented lot which was not permanently affixed? Am I entitled to a \$400 refund?**

Yes, provided all other eligibility requirements were met, this would qualify as a principal residence.

### Recreational Units as Homes

**11.3 I owned a piece of land and lived on it in an RV (camper, tent, etc.) for 7 months or more in 2006. Can I claim the \$400 rebate?**

No, because there are no property taxes paid on an RV, only vehicle registration fees. You must have paid property taxes to receive the refund.

**11.4 I lived in my houseboat all year. Am I entitled to a \$400 refund?**

No, houseboats do not get assessed property tax so there are no taxes to refund on a houseboat.

### Construction Trailers

**11.5 I worked year-round in construction and lived in an on-site trailer that I owned at my business location. Am I entitled to the \$400 refund?**

Yes, provided all other eligibility requirements were met, this would qualify as a principal residence.

**11.6 I worked year-round in construction and lived in a travel trailer that I owned. Am I entitled to the \$400 refund?**

No, because there are no property taxes paid on a travel trailer, only vehicle registration fees. You must have paid property taxes to receive the refund.

## **12. DISABLED AMERICAN VETERANS**

**12.1 I am a 100% disabled American veteran or surviving spouse and own and live in my home. Can I claim the \$400 refund? (Disabled American veterans**

**are exempt or pay only a portion of property taxes, but may be subject to fees and other assessments.)**

Yes, provided that you paid at least \$400 in property taxes. If some lesser amount of taxes was paid over the three year qualifying period, then the refund would be limited to the amount of taxes paid.

### **13. ELDERLY HOMEOWNER/RENTER TAX CREDIT**

**13.1 We are an elderly couple who received the Elderly Homeowner tax credit for property taxes paid on our home. If we meet all the stated eligibility requirements, are we entitled to the refund?**

Yes, provided that you paid at least \$400 in property taxes. If some lesser amount of taxes was paid over the three year qualifying period, then the refund would be limited to the amount of taxes paid.

### **14. VACATION HOME**

**14.1 My wife and I own a home in Helena and a house on Flathead Lake. We divide our time about equally between the two homes during the year, but she probably spends more time at the lake home while I spend more time at our home in Helena. The house on the lake is in my wife's name, and the house in Helena is in my name. Can she claim a refund for the lake home while I claim a refund for the home in Helena?**

No, there can be only one \$400 refund unless you had separate principal residences and you each were present at your principal residence for more than seven months of 2006 and met all the other requirements. Considerations for determining if you had separate principal residences include:

- whether each person listed different addresses on their income tax returns.
- where each person is registered to vote
- where each person's vehicle was registered

### **15. POWER OF ATTORNEY**

**15.1 I have power of attorney for my aged parents and pay property taxes on their home out of a joint account with my name and signature on the check. Are my parents still entitled to the \$400 refund?**

Yes, provided all other eligibility requirements were met.

### **16. PRINCIPAL RESIDENCE ON LEASED LAND**

**16.1 I do not own the land my house is located on. It is a residence on forest service land that I occupied 7 months or more in 2006. I paid the taxes on the residence only. Am I eligible for the refund?**

Yes, provided all other eligibility requirements were met. If you paid less than \$400 in taxes during the three year qualifying period the refund will be limited to the amount of taxes paid.

### **17. INCORRECT NAME ON PROPERTY DEED**

**17.1 My property is deeded to me in my former name. I occupied the home for 7 months or more, and paid the property taxes. Can I still receive the refund?**

Yes, provided all other eligibility requirements were met.



## 18. UNPAID 2006 PROPERTY TAXES

### 18.1 I own my residence and lived in it for 7 months or more during 2006, but I have not paid my property taxes for 2006 yet. Can I still claim the refund?

No, the law specifically provides that in order to qualify for the refund you must have paid the 2006 property taxes owed on your principal residence.

## 19. PROPERTY TAX REFUND USED TO PAY OTHER DEBTS

### 19.1 I've heard that I may not receive any or all of my \$400 refund if I am delinquent on debts owed the State of Montana. Is this true?

Yes, among other things, if you are delinquent on taxes owed the State of Montana, on child support payments, or on payments owed the Montana university system, then all or a portion of your refund may be used to offset those debts.

## 20. TAXABILITY

### 20.1 I've heard that I will owe income taxes on the \$400 refund. Is this true?

Every property owner who receives a refund will also receive a 1099 statement in early 2008. Here are some general guidelines concerning taxability of the refund.

- If you took an itemized deduction for the 2006 property taxes on your home on your tax year 2006 state and/or federal income tax return you will need to include the \$400 refund on your state and/or federal income tax return for tax year 2007.
- If you took the standard deduction in 2006, then you do not have to claim the \$400 refund as taxable income for tax year 2007.
- If you itemized your property taxes for state purposes in 2006, but took the standard deduction for federal income tax purposes, then you need to report the \$400 as income for state income tax purposes only.

## 21. INCOME TAX RELIEF

### 21.1 I've heard rumors that we may be getting more than one property tax refund, but my neighbor told me that we are just getting one refund for \$400, and another neighbor told me that the refund would be \$140. What's the difference?

The 2007 Montana Legislature actually provided for two different ways to return money to Montana homeowners.

- First, qualifying homeowners can apply for and receive a refund of up to \$400 for property taxes that have been paid for tax year 2006.
- In addition, when filing their tax year 2007 income tax returns qualifying homeowners may also be eligible for a tax credit of \$140 for property taxes paid in 2007. This income tax credit is refundable. That means that even if a qualifying homeowner has no income tax liability he or she will still receive a check for \$140.